HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. S/S No. 1233/2004

Aftab Alam
& Others
vs

State of Uttaranchal
Secretary Education
Dehradun

Approved for reporting

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~~Not approved for reporting~~

Date of decision 21-02-2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1233 (SS) OF 2004

1. Aftab Alam, S/o Sabir Ali, R/o Khatyari Ramnagar, District Nainital.
2. Mohd. Zikran, S/o Intezaar Hussain, R/o Khatyari Ramnagar, District Nainital.
3. Abdul Zahur, S/o Abdul Gaffur, R/o Khatyari Ramnagar, District Nainital.
4. Smt. Nazma, W/o Mohd. Hanif, R/o Khatyari Ramnagar, District Nainital.
5. Shagufta Khan, W/o Asif Ali Khan, R/o Khatyari Ramnagar, District Nainital. .....Petitioners.

Versus

1. State of Uttaranchal, through Secretary (Education), Dehradun.
2. Director of Education (Basic), Dehradun, District Dehradun.
3. District Education Officer, Nainital, District Nainital.

.....Respondents.

Mrs. Nishat Intezar & Dinesh Gahtori, Advocate for the petitioner.
Learned counsel for the respondents.

Dated 21.02.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioners have prayed for a writ of mandamus commanding the respondents to permit petitioners to appear provisionally in the written examination which is going to be held on 31.10.2004 for the purpose of appointment on the post of Assistant Teacher in Urdu.

2. At the time of admission, following order was passed on 29.10.2004:-

"Heard learned counsel for the petitioners.

Learned standing counsel accepts notices on behalf of the respondents, who prays for and is allowed three weeks time to file counter affidavit. Two weeks thereafter is allowed for filing his rejoinder affidavit.

List this case thereafter.

Learned counsel for the petitioners submitted that the petitioners have passed 'Adeeb-e-Kamil' from Jamia Urdu Aligarh.

Learned counsel has further drawn the attention of this Court to the U.P. Government order NO. 10/4/1978 Personnel-2 dated 14th July, 1982 where by it has been provided that degree of Adeeb-e-Kamil will be treated equivalent to B.A. in Urdu.

Apart from that as per the Govt. Office Memo no. 14021/2/78-Estt. D, similar provision has been made for the purposes of employment under Central Government. Annexure filed to the writ petition shows that the petitioners have obtained certificate of Moallim-e-Urdu (equivalent to B.T.C.) from the same institute.

In the circumstances, meanwhile it is directed that the respondents shall permit the petitioners to appear provisionally in the examination scheduled to be held on 31.10.2004 for recruitment of Urdu teachers."

3. Brief facts giving rise to the present writ petition are that according to the case of the petitioners, they all are having requisite qualification for the post of Urdu Teacher as each of them passed Urdu examination i.e. Adeeb-e-Kamil from Jamia Urdu Aligarh Institute, which is equivalent to graduation.

5. The Govt. of India passed an order dated 28.06.1978 in which Adeeb-e-Kamil was held to be equivalent to graduation in Urdu Subject.

4. According to the petitioners, they are permanent resident of Khatyari Ramnagar District Nainital and have a domicile certificate.

5. On 29.07.2004, Zila Basic Shiksha Adhikari, Nainital published a notification in daily Amar Ujala newspaper requiring recruitment for Assistant Teacher (Urdu) in Primary School.

6. The short submission of the petitioners in that they have appeared in the interview but their result has not been declared. In a connected Writ Petition No. 1227 (ss) of 2004, the petitioners have also filed the Government Order dated 18th November, 2005 to the following effect:-

"महोदय,

उपर्युक्त विषयक आपके पत्रांक –बेसिक (उर्दू)/36638/2005.06 दिनांक 13.10.2005 के क्रम में मुझे यह कहने का निदेश है कि सम्यक विचारोपरान्त उत्तरांचल राज्य के परिषदीय प्राथमिक विद्यालयों में उर्दू विषय अध्यापन के लिए सहायक अध्यापकों की नियुक्ति हेतु अर्हतायें, पूर्ववर्ती राज्य उ0प्र0 में समय –समय पर प्रचलित आदेशों को दृष्टिगत रखते हुए, निम्नवत् निर्धारित की जाती हैः–

1. उर्दू विषय के साथ स्नातक (बीए) अथवा यूजीसी से मान्यता प्राप्त उर्दू स्नातक के समकक्ष उपाधि के साथ ही जिला शिक्षा एवं प्रशिक्षण संस्थान लखनऊ, सकलडीहा (वाराणसी), आगरा तथा मवाना (मेरठ) से बीटीसी उर्दू अलीगढ़ से मोअलिम–ए–उर्दू प्रशिक्षण प्रमाण पत्र प्राप्त किया हो।

2. यदि उपर्युक्त अर्हता रखने वाले अभ्यर्थी उपलब्ध नहीं हो पाते है तो ऐसी स्थिति में प्राथमिक विद्यालयों में उर्दू भाषा के अध्यापन हेतु भारत में विधि द्वारा स्थापित किसी विश्वविद्यालय से उर्दू विषय के साथ स्नातक उपाधि तथा सामान्य बेसिक अध्यापक प्रमाण पत्र (सामान्य बीटीसी) प्रशिक्षण अर्हता रखने वाले अभ्यर्थियों वाले सहायक अध्यापक के रू॰ में नियुक्त किया जा सकता है।

3. यदि उपर्युक्त निर्धारित शैक्षिक /प्रशिक्षण अर्हता रखने वाले अभ्यर्थी उपलब्ध नहीं हो पाते है, तो ऐसी स्थिति में उर्दू भाषा के सहायक अध्यापकों के रिक्त पदों को भरे जाने हेतु निम्नलिखित श्रेणी के अभ्यर्थियों को वरीयता प्रदान की जा सकती है किन्तु उन्हें अप्रशिक्षित वेतनमान दिया जायेगाः––

क–– किसी मान्यता प्राप्त विश्वविद्यालय से उर्दू विषय के साथ स्नातक (बीए) अथवा यूजीसी से मान्यता प्राप्त उर्दू स्नातक के समकक्ष उपाधि तथा 11.8.97 के पश्चात जामिया उूर्द अलीगढ़ का मोअल्लिम–ए–उर्दू प्रशिक्षण प्रमाण पत्र।

ख–– किसी मान्यता प्राप्त विश्व विद्यालय से उर्दू विषय के साथ स्नातक (बीए) उपाधि अथवा यूजीसी से मान्यता प्राप्त उर्दू स्नातक के समकक्ष उपाधि।

(2) कृपया उक्त के आधार पर उर्दू अध्यापकों की नियुक्ति प्रकिया को इस शासनादेश के निर्गत होने की तिथि से एक माह में पूर्ण करये जाने हेतु तत्काल आवश्यक अग्रेत्तर कार्यवाही किया जाना सुनिश्चित करें।"

7. According to the Government Order, the relaxation has been made, who have got the degree of Moallim-e-Urdu from Jamia Urdu, Aligarh after 11.08.1997.

8. Earlier to the passing of the present Govt. Order dated 18th November, 2005, there were two judgments of this Court, one of the judgments has been passed in Writ Petition No. 794 (S/B) of 2002 Azad Ahamad and 11 others Vs. State of U.A. and and another, where this Court after relying upon the G.O. dated 13th September, 1994 has passed the order to the following effect:-

"A bare perusal of G.O. dated September 13, 1994 Annexure-4 to the writ petition reveal that the State of U.P. has recognized the Moallim-E-Urdu certificate equivalent to B.T.C. Urdu and in pursuance thereof those incumbent who hold such certificates were to be given appointment against vacancies of B.T.C. discipline in Urdu language. No doubt, by G.O. dated 11.08.1998 certificates, which were recognized as equivalent to

B.T.C., have been de-recognized, except the certificates issued by institutions specified in this order. Jamia-E-Urdu do not find place among those institutions and therefore, the certificate of Moallim-E-Urdu ceased to have recognition with effect from the date of issuance of the said G.O. dated 11.08.1997. Learned Standing Counsel did not controvert the argument advanced by the learned counsel for the petitioners that in view of the provisions of Section 86 of Uttar Pradesh Reorganization Act, 2000 both the above G.O.s of the State of U.P., issued prior to the creation of the State of Uttaranchal, continue to apply in the State of Uttaranchal. Therefore, if any person has obtained Moallim-E-Urdu certificate before 11.08.1997 will be entitled to the benefit of this certificate and G.O. dated 13.09.1994 (Annexure-4)

* * * *

For the above reasons only those petitioners who have obtained Moallim-E-Urdu certificate before 11.08.1997 will be entitled to proper relief in this petition. Since the candidates who were selected pursuant to advertisement dated 16.06.2002 issued by respondent No. 2 have not been impleaded as the respondents in this petition and therefore, no relief in regard to the said advertisement is being granted to the petitioners.

The petition, therefore, succeed partly and a writ in the nature of mandamus directing and commanding the respondents to recognize the certificate of Moallim-E-Urdu equivalent to B.T.C. (Urdu) for the recruitment against the appropriate posts of those petitioners who have obtained certificate prior to 11.08.1997. No order as to costs."

9. A counter affidavit has been filed by the State, where in paragraph 5 it has been stated as under:-

"6. That the contents of para 4 of the writ petition are not admitted and are denied. Prior to 11/08/1997 Moallim-e-Urdu Course of Jamiya Urdu Aligarh was recognized equivalent to B.T.C. Couirse by the Stat eof U.P. Such recognition was cancelled by the State of U.P. on 11/08/1997 vide Government Order No. 2657/15-5-97-127/97 T.C. A true copy of the Government Order dated 11.08.1997 is being filed herewith and is marked as ***Annexure No. C.A. 2*** *to this affidavit. A writ petition No. 794 of 2002 was also filed for a direction to the State of Uttaranchal to recognise certificate Moallim-E-Urdu is equivalent to B.T.C. On 02/08/2003, the Hon'ble Court held the validity of the Government Order dated 11/08/1997 and directed to recognise the certificate of Moallim-E-Urdu Course equivalent to B.T.C. of those petitioners only who have obtained certificate prior to 11/08/1997."*

10. In view of the aforesaid Government Order, the writ petition deserves to succeed. A writ of mandamus is issued to the respondents to consider the candidature of the petitioners for the post of Assistant Teacher in accordance with the Government Orders dated 13th September, 1994 and 18th November, 2005 within a period of six weeks from the date of presentation of the certified copy of the order.

11. Consequently, writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

21.02.2006
Rathour